

THE
CODE OF VIRGINIA:

WITH

THE DECLARATION OF INDEPENDENCE

AND

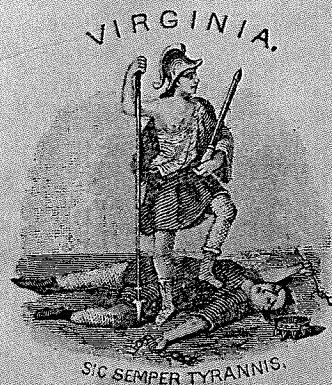
THE CONSTITUTION OF THE UNITED STATES

AND THE

CONSTITUTION OF VIRGINIA.

PUBLISHED PURSUANT TO AN ACT OF THE GENERAL ASSEMBLY OF VIRGINIA, APPROVED MARCH
TWENTY-ONE, EIGHTEEN HUNDRED AND EIGHTY-SEVEN.

A. R. MICOU, SUPERINTENDENT OF PUBLIC PRINTING.



RICHMOND:
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1887.

h. 34. [Senate

TS OF ERROR, ETC. [TIL. 53,

ts for contempt of court.—To a judge than for the non-performance of, or ee, or order, a writ of error shall lie, court, from the circuit court having en it is of a circuit, corporation, or ppeals. This section shall not be con- to a judgment of a county court rend- a justice for contempt.

of error prepared; transcript of record t, when and by whom awarded.—Any may apply therefor on petition, which ion there shall be a transcript of the erein the judgment complained of is, o whom the petition is to be presented, t, and enable the court, if the petition e questions that may arise before it. of the record, a writ of *certiorari* may in vacation.

ented.—The petition, in a case wherein of appeals, may be presented to the the said court, to any judge thereof; s from a circuit court, the petition may n the vacation thereof, to the judge of dge.

lowed, and to operate as a *supersedeas*; eals in vacation, court may allow it.— ition is duly presented, if of opinion ought to be reviewed, may allow a writ *supersedeas* thereto, if the court or judge is and conditions as the said court or ial of a writ of error by a judge of the f the court, on petition presented to ce of the writ by the said court, if by of the petition to the said court at its

docketed and heard; issue of summons st commonwealth served.—When a writ art or circuit judge to a judgment of a cketed and heard and determined in n over such county. If on a petition e circuit judge, the said court or judge n may be presented to the court of said court, to any judge thereof, and if the said court or judge, the case shall rmined in the court of appeals. All r is awarded by the court of appeals, ed and heard and determined in the wherein a case is docketed shall issue rested other than the petitioner that any *supersedeas* which may be awarded. ndant in error, if the case be in the erved on the Attorney-General; if the

CH. 193.] EXCEPTIONS, WRITS OF ERROR, ETC.

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case be in a circuit court, process shall be served on the commonwealth's attorney of the county to the judgment of the court whereof the writ of error is awarded.

Sec. 4058. *Decision of appellate court.*—The court, from which a writ of error lies, shall affirm the judgment, if there be no error therein, and reverse the same in whole or in part, if erroneous, and enter such judgment as the court, whose error is sought to be corrected, ought to have entered; or remand the cause and direct a new trial; affirming in those cases where the voices on both sides are equal.

Sec. 4059. *Provisions which apply to criminal as well as civil cases.*—Sections thirty-four hundred and seventy-five, thirty-four hundred and seventy-six, thirty-four hundred and eighty-three, thirty-four hundred and ninety-two, and thirty-five hundred and seven shall apply as well to criminal as to civil cases: *Provided*, that a criminal case in a circuit court upon a writ of error, wherein the commonwealth is not the plaintiff in error, shall not be heard and determined in vacation, except by consent of parties, or on the motion of the plaintiff in error and after reasonable notice to the commonwealth's attorney of the county in the court whereof the judgment complained of was rendered: *Provided further*, that in a felony case in the court of appeals, if the plaintiff in error file with the clerk of the said court an affidavit that he is unable to pay or secure to be paid the costs of printing the record in the case, the printing shall be done as if the costs had been paid, and the clerk shall not be required to account for and pay the same into the treasury; but if the said costs be not paid or secured to be paid, and, upon the hearing of the case, the judgment of the court below be wholly affirmed by the court of appeals, the said court, in affirming, shall also give judgment in behalf of the commonwealth against the plaintiff in error for the amount of the said costs, to be taxed by its clerk.

Sec. 4060. *How judgment of appellate court certified and entered.*—The judgment of the appellate court shall be certified to the court to whose judgment the writ of error was allowed, which shall cause the same to be entered on its order book as its own judgment; and if the judgment certified be a judgment of the court of appeals on a writ of error to a judgment of a circuit court or the judge thereof rendered on a writ of error to a judgment of a county court, such judgment of the court of appeals, after being entered on the order book of the said circuit court, shall be forthwith certified by the clerk of the said circuit court to the said county court, which shall cause the same to be entered on its order book.

Sec. 4061. *When sentence of death executed.*—Sentence of death, except *Id.*, p. 317, §8. for insurrection or rebellion, shall not be executed sooner than thirty days after the sentence is pronounced.

Sec. 4062. *By whom and how inflicted.*—The clerk of the court pro- *Id.*, §9. nouncing such sentence, shall, as soon as may be after the sentence, deliver a certified copy thereof to the officer of said court, who shall cause the sentence to be executed. Under such sentence, death shall be inflicted by hanging the convict by the neck until he is dead.

Sec. 4063. *How executed; who to be present.*—In no case shall the sen- 1378-9, p. 380, tence of death be executed in a public manner. If there be around or c. 19. adjacent to the jail in which the convict is confined an enclosure of sufficient size within which the sentence may be executed and the execution

Sec. 4059
Amended.
See Supplement
p. 402.

2 Va. Cas., 122.
4 Leigh, 669.
2 Gratt., 538,
559.
5 Gratt., 663.
18 Gratt., 915.
21 Gratt., 822.

not be seen by persons without, the sentence shall be executed within such enclosure. If there be no such enclosure, the officer executing the sentence shall erect at some suitable place a temporary enclosure which shall exclude the public view, and the sentence shall be executed within that enclosure. He shall be attended in the execution by such guards and assistants as he deems necessary, and request and permit the presence of the commonwealth's attorney of the court that pronounced the sentence, the clerk, and other officers of such court, and twelve respectable citizens, including a physician and surgeon. He shall moreover permit the presence of the convict's counsel, such ministers of the gospel as the convict desires to be present, and such of the convict's relatives as the officer may deem prudent to admit.

1877-8, p. 347,
c. 18, §11.

Sec. 4064. Certificate of execution.—The officer executing the sentence of death shall certify the fact to the clerk of the court, who shall file the certificate with the papers in the case.

Id., p. 348, §12.

Sec. 4065
Repealed.
See Supplement
p. 402.

Sec. 4065. Delivery at penitentiary of persons sentenced to confinement therein. How expenses of convicts paid.—Every person sentenced by a court to confinement in the penitentiary, shall, as soon as may be, be delivered at the penitentiary by the officer of such court. If he fail to make such delivery within a reasonable time, he shall forfeit one hundred dollars. The Auditor of Public Accounts shall allow an officer conveying a convict to the penitentiary, the necessary expenses of such convict.

Id., §13, p. 216,
c. 234.

Sec. 4066
Repealed.
See Supplement
p. 402.

Sec. 4066. Clerk to send record of trial and conviction to Superintendent; also to furnish officer with certificate of transportation.—The clerk of the court, in which a person is sentenced to the penitentiary, shall forthwith transmit to the Superintendent a copy of the record of the trial and conviction. If he fail so to do, he shall forfeit one hundred dollars. He shall at the same time furnish the officer a proper transportation certificate, under the seal of the court, stating the number and names of persons entitled to transportation for each part or line of railroad, or other transportation company's line, over which the officer will necessarily pass in conveying the convict to the penitentiary.

Id., p. 348, §14,
15.

Sec. 4067
Repealed.
See Supplement
p. 402.

Sec. 4067. Regulation of guard in conveying prisoners.—The officer, who is required to convey a prisoner to the penitentiary, or to any other place, may, if he deem it necessary for his safe conveyance from the starting point to any railroad or line of boats on the way to the point of destination, summon one person as a guard for each prisoner to such railroad or boat line; after which the said officer shall have no guard, unless there be more than two prisoners, and then but one guard; and shall convey the prisoners, well secured, to the prison or place of destination: *Provided*, that when the court or judge, by whose judgment or order a prisoner is to be removed, shall think a stronger guard necessary, and order it, as many persons, as may be so ordered, shall be summoned by the officer.

Id., §16.

Sec. 4068
Repealed.
See Supplement
p. 402.

Sec. 4068. When officer may increase guard.—If, on the way to the penitentiary or other place, in consequence of an attempt to rescue the prisoner, made or reasonably apprehended, or in consequence of any other unforeseen danger, the officer is satisfied that a stronger guard than was before summoned is necessary, he may summon such additional guard as is necessary.

Id., p. 216,
c. 234.

Sec. 4069
Repealed.
See Supplement
p. 402.

Sec. 4069. Auditor to furnish officer with certificate of transportation back.—The Auditor of Public Accounts shall issue to the officer presenting the receipt of the Superintendent of the Penitentiary, for a convict